

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947

February 9, 2006

Joseph A. Hurley, Esquire  
1215 King Street  
Wilmington, DE 19801

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RE: Richard M. Quill v. State of Delaware, Def. ID# 0412005166

DATE SUBMITTED: November 5, 2005

Dear Counsel:

Pending before the Court is an appeal which Richard M. Quill (“appellant”) has filed from a decision of the Court of Common Pleas (“CCP”) finding him guilty of passing a stopped school bus in violation of 21 Del. C. § 4166(d)(1). This is my decision affirming the decision below.

In 21 Del. C. § 4166, it is provided in pertinent part as follows:

(b) *School bus flashing lamps.* -- (1) School bus flashing lamps are intended to identify the vehicle as a school bus and to inform other users of the highway that such vehicle is about to stop or is stopped on the roadway or shoulder to take on or discharge school children. They are separate from the brake lamps and shall not be used in lieu of or to supplement the brake lamps.

(2) The amber warning lamps shall be activated approximately 10 seconds prior to the red stop lamps to give motorists advance notice that the bus is preparing to stop or has stopped to pick up and discharge pupils. The lamps shall always be used prior to the red when available and shall be used only after the bus is relatively parallel with the travelway. The bus may be in motion when the amber warning lamps are activated.

(3) The red stop lamps shall be activated only when the bus is stopped, but only when the bus is stopped on the shoulder or roadway to pick up and discharge pupils. The red stop lamps shall not be displayed while the bus is in motion either before or after a stop.

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(d)(1)*Overtaking and passing school bus.* -- When a school bus is stopped and displays flashing lamps in accordance with subsection (b) of this section, the driver of any vehicle approaching the school bus from the front or from the rear shall stop before passing the bus and remain stopped until such bus begins to move or no longer has the red stop lamps activated.

The case was tried before a CCP Judge. The evidence before the court consisted of the testimony of Floyd McGee, Jr., the school bus driver; Carol Wilkins, a mother of one of the school children on the bus; appellant; and John Tyndall, the arresting Georgetown Police Officer. Pertinent portions of the testimony are set forth below.

On December 6, 2004, at around 3:00 p.m., Mr. McGee was driving the school bus in question eastbound on Market Street in Georgetown.. He was letting Shelby Wilkins off the bus at her grandparents' East Market Street home. When asked to explain what happened at that date and time, he testified:

A. Well, I put the amber lights on, the warning lights, far enough in advance before I get to the home, the let off place.

Q. Okay. Would you give me an estimate of when you put the amber lights on?

A. Well, in that area, there's a stop -- close, so I only got maybe sixty, eighty feet, something like this, maybe I'm just saying -- maybe a hundred feet between some of the houses, you know. So I got to get them on within that time, you know?

Q. All right. So you remember turning your amber lights on?

A. Oh, yeah.

Q. Are these steady lights or flashing lights?

A. Oh, they flash. They flash, yeah.

Q. Then what happened?

A. Well, then I turned the red lights on right in front of where I let her off. But she had to cross the street. ...

...

A. When I stopped, the red flashing lights was on and the red light coming out on her. When I stopped, this vehicle pulled right up, his back bumper was even with my front bumper. In other words, he'd gone past the bus and then realized that he had, I guess, gone past, further than he should have, so he did stop with his back bumper to my front bumper.

Trial Transcript ("TT") at 5-6.

Mrs. Wilkins testified to the following. She was waiting for her daughter to be dropped off by the school bus. She initially saw the bus about two blocks away where he dropped somebody off. She saw him turn on the yellow lights. "He probably turned them on, like, not hardly close to -- there's an intersection that you turn right there, it was a little bit up before that." TT at 14. The bus stopped. She saw that appellant, who was traveling westbound on Market Street, was looking down and not paying attention to the school bus, and he did not realize the bus had stopped until his back bumper was even with the front bumper of the bus. When asked to estimate the time between the bus stopping and appellant passing the bus, she replied, "Maybe ten seconds, fifteen seconds." Id. She admitted this estimate was a guess. TT at 15.

Appellant's testimony was that he was heading westbound behind another school bus which had stopped to discharge a passenger and just had started moving again. He was going

about ten miles per hour and he was looking at the bus in front of him and to the right for kids that might have gotten off that bus. He explained there was traffic and both sides were creeping.

TT at 20. The bus in front of him blocked his vision of Mr. McGee's bus. He further testified:

When I first looked out my left side, after I looked up, it was, you know, from looking the front -- the lights were on, the yellow lights were on. Immediately I saw the red light go up and the arm in front of the driver's side, but at that point I was almost -- I was encroached in there. When I saw the red, as the red light goes on, the arm was starting to come up too in front of, I believe, the bus driver, I believe in front of his window.

TT at 21.

The Court rendered its verdict finding appellant guilty as charged. The pertinent portions of its decision are as follows:

All right. As far as the amber light warning, when that went on, I'm satisfied that Mr. McGee's testimony covered the subsection two, ten-second prior. Based on his estimation of the distance, sixty to eighty feet prior to, and Ms. Wilkins' corroboration that she saw it down the road, I'm satisfied that there's enough evidence that establishes, that (b) of 4166 Title 21 has been met. ...

... The testimony was, from Mr. McGee, that he was driving eastbound on Route 9, he stopped on East Market Street to discharge one of his student passengers, that he did engage his warning lights on, they were flashing, about sixty or eighty feet before the stop. When he stopped, in compliance with the statute, he turned the red lights on, the arm went out at the stop.

Appellant's argument on appeal is that the State of Delaware did not establish that the bus driver had his amber lights on for 10 seconds before the red lights came on. He maintains the temporal time cannot be inferred from the testimony before the Court. Even though it was irrelevant to him whether the amber lights were on for approximately 10 seconds and he admittedly failed to stop for the bus in time, he argues he cannot be found guilty of passing a stopped school bus.

As explained in Shambor v. State, Del. Super., Def. ID# 0107004481, Alford, J. (April 11, 2002), at 2-3:

Pursuant to Delaware law, appeals in criminal cases from the Court of Common Pleas to this Court are judged by whether, after reviewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. [Footnote and citation omitted.]

The pertinent statute is designed to protect children boarding or alighting a school bus. Sample v. State, Del. Super., Cr. A. No. N87-05-0606A, Babiarz, J. (Feb. 28, 1989) at 2; State v. Cordeaux, Del. CCP, Cr. A. No. 79-01-0023, Trader, J. (Feb. 2, 1979). The amber lights, as the statute states, are designed to give motorists warning that a school bus is about to stop. Accord Sample v. State, *supra* at 3. The statute does not require the amber lights be on for exactly 10 seconds; it requires they be on for approximately 10 seconds.

In this case, the bus driver testified he turned on the lights “far enough in advance before I get to the home”. Specifically, he turned them on at a point from where he dropped off the previous passenger. Mrs. Wilkins testified that the drop off spot was approximately two blocks away. Mrs. Wilkins also testified she saw the lights go on before the intersection in the block where she was waiting. Appellant testified traffic was creeping. All of that evidence is sufficient to support the conclusion that the bus driver turned on the amber lights approximately 10 seconds before stopping. Thus, there is sufficient evidence to support the decision of the court below that all elements of the statute were met and that appellant violated the statute. Appellant’s appeal is denied.

For the foregoing reasons, the appeal fails. The decision and sentence of the Court below are affirmed. This matter is remanded for the court below to lift the stay imposed and reimpose

its sentence.

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

cc: Prothonotary's Office  
CCP Clerk's Office  
The Honorable Rosemary Beauregard